

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

Plaintiff,

SCHEDULING ORDER

05-CR-6161L

v.

JOHN NICOLO, DAVID FINNMAN,  
CONSTANCE ROEDER,

Defendants.

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All three defendants, John Nicolo, David Finnman and Constance Roeder, have filed objections to their respective Presentence Reports and the Guideline calculations contained there. The Government has responded, or is in the process of responding, and arguments have been set to discuss those issues.

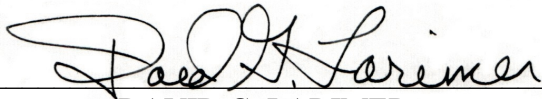
I feel quite confident that all defendants intend to make application for a non-Guideline sentence based on the particular circumstances of each defendant. I anticipate that such application will be made regardless of whether the Court adopts the Guideline range advanced by the Probation Office or reduces the Guidelines to some extent based on the objections filed.

Therefore, any motion for a non-Guideline sentence must be filed on or before January 20, 2009. By that filing deadline, the Court may have resolved all of the issues relative to the proper

Guidelines, but even if some issues remain, the non-Guideline application must still be filed, since I am certain the application will be made regardless of the ultimate Guideline calculation. Once all the Guideline calculation issues have been resolved, if counsel wish to submit a brief supplement to the non-Guideline motion, and if it is filed at least three (3) business days prior to sentencing, I will accept that supplement of no more than four (4) pages in length. Of course, counsel could supplement the original motion, orally, at sentencing.

If the Government wishes to respond to any motion for a non-Guideline sentence, it must do so on or before February 2, 2009.

IT IS SO ORDERED.



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DAVID G. LARIMER  
United States District Judge

Dated: Rochester, New York  
January 8, 2009.